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ABSTRACT

This publication presents consumer information designed to encourage and facilitate active citizen involvement in Federal Trade Commission (FTC) proceedings. Nine chapters are included, covering (1) the FTC and its impact on consumers (discusses the authority of FTC, the Bureau of Competition, the Bureau of Consumer Protection, and lists FTC regional offices); (2) categories of FTC proceedings; (3) opportunities for public participation in FTC proceedings; (4) currently active proceedings in the Bureau of Consumer Protection; (5) how groups have participated in FTC rulemaking; (6) compensation for costs of participating in FTC rulemaking; (7) major consumer protection statutes administered by the FTC; (8) information and materials available from the FTC; and (9) other methods of obtaining FTC records and information. A fifteen-page appendix includes an FTC organization chart, active FTC proceedings, how to apply for reimbursement of FTC rulemaking participation, and a list of groups which have received compensation awards for participating in FTC rulemaking proceedings. (EL)

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A Consumer's Guide to the Federal Trade Commission

U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

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September 1977

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Becky Geanaros.

Preface

For far too long federal agencies have existed as intimidating and unapproachable Washington sanctuaries—remote from citizen involvement and isolated from the day-to-day concerns of the general consuming public. Would-be consumer participants have faced a series of hurdles which have often seemed calculated to discourage significant citizen involvement. First there is the chore of sorting through an alphabet soup maze of agencies to find the potentially appropriate problem solver. Even when the correct agency is identified, the nameless and often faceless cast of characters within the agency makes it difficult to quickly zero in on the right department, division or office. Though agencies traditionally prepare pamphlets and other literature aimed at serving the consumer, those who are most in need of help frequently remain unaware of the existence of such tools. Repeatedly there has been that greatest of all frustrations: the absence of funding for meaningful agency participation by citizens and citizen groups. Armed with the ability to make a significant contribution to agency proceedings, citizens typically do not have the economic resources to translate their personal experiences into technically and legally effective testimony.

Fortunately there is a growing force both in and out of these agencies which is committed to reversing the history of inadequate consumer participation and that force is determined to create a trend of active citizen involvement. This consumer guide has consciously been designed to serve as a practical contribution toward that trend. It lays out in clear and concise language the types of proceedings within the FTC's jurisdiction, appropriate ways for the public to participate in these proceedings, and methods for obtaining funding to cover the costs of that participation.

This booklet has been prepared to encourage and facilitate citizen participation. Simultaneously it serves as an example of consumer education which aims to be as practical as possible. It is important to note that funds for the Consumers' Education Program, U.S. Department of Health, Education and Welfare, have made this project possible.

It has become increasingly apparent that consumer *protection* will never become a reality unless it includes the vital component of consumer *education*. Consumer education at every level must become increasingly practical, activist, and imaginative. It is essential that consumers be made aware of their current rights and responsibilities and the varying relationship and roles of citizens and government in the enforcement of those rights. Only then can consumers effectively demand protection and work toward an expansion of those substantive and procedural rights which constitute the essence of consumer protection.

This publication has been possible because of the untiring efforts and devotion to detail of dozens of individuals. Yet special recognition deservedly goes to Elizabeth Williams, who researched the vast amount of material which formed the basis of the text which she also wrote. Additionally, the efforts of Sherry Lindquist and Sally Taylor were instrumental in assuring a comprehensive and high quality publication. Finally, we extend warm thanks

to those who contributed valuable suggestions for improving what became the final product, and likewise provided much appreciated moral support and enthusiasm—particularly Arthur Angel, Hank Barta, Jo Ann Clayton, Lewis Goldfarb, Tim Holcomb, Nancy Kramer, Victor Kramer, Michael Lemov, Bonnie Naradzay, Pam Piering, Michael Schulman, Mark Silbergeld, and Harry Snyder.

Kathleen F. O'Reilly
September 1977

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1 The Federal Trade Commission and Its Impact on Consumers

The Federal Trade Commission (FTC) was created by Congress in 1914 to eliminate unfair competition in business and to protect the public from abusive or deceptive advertising and business practices by sellers of goods or services. The agency administers numerous federal laws designed to further these purposes (see Chapter 7).

The FTC is headed by five Commissioners and is divided into several bureaus, each composed of smaller divisions (see Appendix A). Most directly affecting the public are the Bureau of Competition and the Bureau of Consumer Protection.

The Bureau of Competition carries out the Commission's principal antitrust functions, regulating practices which tend to restrain free competition or promote monopoly in interstate commerce.

The Bureau of Consumer Protection implements and enforces laws under the FTC's jurisdiction which are designed to protect consumers. In recent years, the Bureau has become more aggressive in challenging powerful businesses and industries which violate these acts. This increase in forceful consumer protection activity by the Bureau of Consumer Protection has been largely a result of three factors: a reorganization of the Commission in the early 1970's; upgrading of staff personnel, especially the hiring of several aggressive attorneys and the appointment of a new FTC Chairman; and passage of several federal consumer protection laws including the Truth in Lending, Fair Credit Reporting, Magnuson-Moss Warranty-Federal Trade Commission Improvement, Fair Credit Billing, Equal Credit Opportunity, and Consumer Leasing acts.

Headquartered in Washington, D.C., the FTC also has eleven regional offices and one smaller field station, enabling citizens to contact and deal with the agency in their own geographical areas (*see Table I*). Through these regional offices, the Commission conducts investigations and maintains an awareness of businesses' activities and their effects on consumers throughout the country.

Many decisions made by the FTC have an immediate and significant impact on consumers' lives. Every year millions of Americans will encounter problems, ranging from credit discrimination to the sale of mislabeled merchandise, for which it is the FTC's job to find solutions. The FTC is the federal agency with authority to act against law violators, for example, when:

- A married couple's application for credit is rejected because the wife is the main source of their income.
- Someone leases living room furniture based on an advertisement which states "only $15.95 a month," without disclosing that there is an additional charge for delivery, that a security deposit is required, or that the renter is required to pay for insurance during the lease period.
- A consumer buys a nationally advertised drug unaware that claims made in advertising for the drug have not been substantiated.
- A couple is denied credit because a computer error has caused an erroneous report on them to be widely circulated.
- A consumer washes a new shirt according to instructions on the care label,

but the shirt "bleeds," discoloring other clothes being washed at the same time.

The FTC is not a private complaint handling service. It regulates the acts and practices of businesses and sometimes entire industries for the benefit of the public as a whole, but is not authorized to resolve consumer problems on an individual basis. Thus, consumers with individual grievances should seek help from their state Attorney General, lawyer referral service of the local bar association, neigh-

TABLE I
FTC REGIONAL OFFICES

Atlanta
Federal Trade Commission
Room 1000
1718 Peachtree Street, N.W.
Atlanta, Georgia 30309
(404) 881-4836

Boston
Federal Trade Commission
Room 1301
150 Causeway Street
Boston, Massachusetts 02114
(617) 223-6621

Chicago
Federal Trade Commission
Suite 1437
55 East Monroe Street
Chicago, Illinois 60603
(312) 353-4423

Cleveland
Federal Trade Commission
Room 1339
Anthony J. Celebrezze Federal Office Building
1240 East 9th Street
Cleveland, Ohio 44199
(216) 522-4207

Dallas
Federal Trade Commission
Suite 2665
2001 Bryan Street
Dallas, Texas 75201
(214) 749-3056

Denver
Federal Trade Commission
Suite 2900
1405 Curtis Street
Denver, Colorado 80202
(303) 837-2271

Los Angeles
Federal Trade Commission
Room 13209
Federal Building
11000 Wilshire Boulevard
Los Angeles, California 90024
(213) 824-7575

New York
Federal Trade Commission
2243-EB, Federal Building
26 Federal Plaza,
New York, New York 10007
(212) 264-1207

San Francisco
Federal Trade Commission
450 Golden Gate Avenue
Box 36005
San Francisco, California 94102
(415) 556-1270

Field Station
Federal Trade Commission
Room 605, Melim Building
333 Queen Street
Honolulu, Hawaii 98613
(808) 546-5685

Seattle
Federal Trade Commission
28th Floor, Federal Building
915 Second Avenue
Seattle, Washington 98174
(206) 442-4655

Washington, D.C.
Federal Trade Commission
6th Floor, Gelman Building
2120 L Street, N.W.
Washington, D.C. 20037
(202) 254-7700

borhood legal services office, small claims court, local office of consumer affairs, private attorney, or local consumer protection groups to resolve their complaints.

However, the FTC does need to be kept informed of individuals' problems, in order to enforce laws and regulate businesses and industries under its jurisdiction. The Commission relies on letters from consumers to help it identify industries or individual violators whose activities it should monitor or against whom it should take action.

Thus, while citizens may pursue individual actions to recover for personal damages, it is critical that at the same time they send copies of their complaints to the FTC to help the Commission determine where action is needed to eliminate abusive business practices. The Commission staff analyzes and codes information contained in letters received from consumers, storing it for future reference and use by the Commission.

The Bureau of Competition

The Justice Department and the FTC have concurrent jurisdiction over federal antitrust laws. The FTC's Bureau of Competition investigates and prosecutes unfair methods of competition in or affecting commerce, so that fair prices and quality products and services are available to the American public.

The Bureau has recently increased its emphasis on investigations of entire industries rather than investigating individual law violations as cases arise. Currently, for example, the Bureau is examining industry-wide practices in the following areas:

- *The petroleum industry.* In the "Exxon" case, a complaint issued by the Commission alleges that Exxon and seven other leading firms in the petroleum industry have monopolized and conspired to monopolize production, refining and distribution of petroleum products on the Eastern and Gulf coasts. A date for trial has not yet been set.
- *The cereal industry.* In a complaint against "Kellogg Co., et al," the Commission is challenging practices allegedly resulting in a shared monopoly among the four largest firms in the breakfast cereal industry. This case is presently in trial.
- *The medical profession.* The Commission, in a series of complaints, is questioning the pricing practices of physicians. In a complaint issued against the American Medical Association, the Commission is charging that advertising restrictions contained in the Association's Code of Ethics unlawfully restrain competition. This case is currently in trial.
- *The dental profession.* An investigation of the American Dental Association and state dental associations in Indiana and Illinois has been announced. These associations' codes of ethics are being questioned, especially their restrictions on advertising, which allegedly restrain competition.
- *The automobile industry.* The Bureau is conducting a major investigation of anti-competitive practices in the domestic automobile industry.

The Bureau of Consumer Protection

The Bureau of Consumer Protection's mandate is to enforce laws and develop regulations to protect consumers from unfair or deceptive acts or practices. On the Bureau's recommendation, the Commission issues opinions, guides, rules and orders regulating numerous industries with which consumers deal regularly. Its decisions have addressed abusive business practices in a wide range of consumer areas. Currently, for example, the Bureau of Consumer Protection is considering questions such as:

- What kinds of claims may be made in advertising over-the-counter drugs?
- What is the funeral services industry required to do to ensure that consumers are able to make informed decisions when arranging funerals?
- What information must a vocational or home study school make available to prospective students so that they can realistically judge the value of their invest-

ment before committing time and money?

- What nutritional claims may food manufacturers make when advertising their products?
- What burdens may a manufacturer impose on a consumer as a precondition to receiving the protections offered by a "full" warranty on a product?

Since the Federal Trade Commission Improvement Act went into effect in January 1975, consumer input of information and suggestions to the Bureau of Consumer Protection has increased notably. In addition, largely as a result of that Act, active consumer participation in Bureau of Consumer Protection rulemaking proceedings has increased significantly.

2 Categories of FTC Proceedings

The FTC generally enforces the laws in its jurisdiction in any of four different ways. If it feels that the public interest will be served adequately, it may act to ensure compliance by issuing an *advisory opinion* or an *industry guide*. If after an investigation the Commission feels that these methods are inappropriate or will not sufficiently protect the public, it may initiate an *adjudicative proceeding* (litigation), which may in turn lead to a consent agreement or a cease and desist order. Finally, if handling a matter on a case-by-case basis seems inefficient, as where questionable acts are prevalent throughout an entire industry, a *trade regulation rule* may be proposed.

Advisory Opinions

Advisory opinions are issued on the request of a person or corporation that wants to know whether a proposed (not a present or past) course of conduct will be legal and acceptable to the Commission. After giving an official opinion, the Commission can later reconsider and reverse its decision, but it cannot penalize parties who have relied in good faith on that opinion, and must give them a reasonable opportunity to discontinue their course of action.

Advisory opinions not only help the party requesting guidance, but protect consumers as well, by dissuading businesses from acting as they otherwise might have. For example, a book publisher planning to issue a series of books on underwater exploration asked the FTC if it could send out descriptions of the books with subscription order forms, to determine how much interest consumers would have in such a series. If sufficient consumer interest was lacking, the company stated, it planned to return any money subscribers had sent in. The FTC issued an advisory opinion declaring that any advertisements of a projected series and any order forms would have to clearly disclose the fact that the books did not yet exist, to avoid being unfair or deceptive in advertising.

Industry Guides

Industry guides are interpretations of the laws administered by the Commission to guide industry in conforming to those laws. Although the purpose of industry guides is to facilitate voluntary compliance with legal requirements and they lack the force of law, failure to comply with the guides may result in corrective action by the Commission.

In recent years, the FTC has issued industry guides less and less often, relying increasingly on trade regulation rules to enforce compliance with its statutes. However, some industry guides are still being issued. For example, the Commission issued a Fuel Economy Guide, rather than a broader and more time-consuming trade regulation rule, to require that whenever an automobile advertisement mentions fuel efficiency, it must disclose what the EPA mileage rating is.

Adjudicative Proceedings

An adjudicative proceeding is similar to a court proceeding. Parties have all the rights necessary for a fair hearing, including the right to appear at a formal hearing, to present testimony and evidence, and to

cross-examine witnesses. An administrative law judge named by the Commission presides and issues initial findings of fact, subject to review by the Commissioners.

An adjudicative case may be resolved in any of three ways:

- It may be settled either before or during the hearing by a consent agreement, in which the respondent neither admits nor denies guilt but agrees to stop the practices which the Commission is challenging and to take any affirmative actions the Commission requires.
- If, after hearing the evidence, the administrative law judge finds that violations of the law have not been proven, the case is dismissed.
- If the respondent does not contest the charges or is found to have committed the violation alleged in the complaint, then after all appeals have been exhausted the Commission issues a cease and desist order.

Trade Regulation Rules

Trade regulation rules (TRR's) define and prohibit industry practices which are unfair or deceptive, and set standards with which businesses must comply. TRR's may apply to industries all across the country or may be limited to particular areas. Unlike opinions or guides, TRR's have the force of law. Thus, a violation of a TRR is equivalent to a violation of a statute or a Commission order. TRR's forbid only future conduct, prohibiting the continuation of practices harmful to consumers and setting standards for future practices of the industries involved.

The Magnuson-Moss Warranty-Federal Trade Commission Improvement Act, effective January 1975, confirmed the Commission's authority to issue substantive TRR's, and set new procedures for the Commission to follow in rulemaking proceedings.

Since the Act went into effect, the Bureau of Consumer Protection has initiated rulemaking actions more often than any other type of proceeding, since through a TRR the Bureau can deal with an entire industry or broad consumer problem in a single action rather than bringing separate cases against numerous individual offenders. The Bureau of Competition has not yet engaged in rulemaking. Whether or not it has authority to do so is unclear.

3 Opportunities for Public Participation in FTC Proceedings

Advisory Opinions and Industry Guides

The formulation of advisory opinions and industry guides by the Commission involves very little input from the public, since these forms of enforcement essentially represent the Commission's own interpretations of what conduct is legally acceptable. Individuals' ability to affect the development of these guides is limited to bringing problems to the Commission's attention by requesting clarification from or reporting questionable practices to the Commission; and to submitting views when comments on proposed guides are invited in the Federal Register.

Adjudication and Rulemaking: The Role of Consumers' Letters and Petitions

Letters from consumers constitute one important form of public participation in adjudicative and rulemaking proceedings. A complaint letter may inspire the Commission to initiate a formal adjudicative investigation or rulemaking proceeding, or may direct the Commission's attention to certain issues which should be raised in proceedings which have already begun.

No formalities are required to submit a complaint. A letter giving detailed facts and including all the evidence available to the complainant which will support the charges, is a sufficient complaint. A more formal petition may be submitted requesting a certain type of action by the Commission, but such formality is generally not necessary, as the Commission looks at the substance rather than the form of input from the public in determining how to respond. Letters may be sent to the appropriate FTC regional office if a local practice is being reported, or to the FTC's Washington, D.C. headquarters.

Letters and petitions have frequently been responsible for prompting the Commission's initial adjudicative or rulemaking action. For example, it was a consumer's letter of complaint that originally brought the Commission's attention to several leading department stores' practice of erasing credits from customers' charge accounts after a certain amount of time. The consumer, whose account had been credited for some merchandise she had returned to the store, wrote to the FTC when a month later the credit no longer appeared on her account statement.

This complaint led the Commission to sign consent agreements with nine of ten stores found to be engaging in this practice, forbidding them to continue the practice and requiring them to refund all money to customers who had had account credits dropped from their billing statements. The FTC issued a complaint against the tenth retailer when a consent agreement could not be negotiated, and has recently ruled that the company must offer refunds to all of its affected customers.

Similarly, a recent petition by the Institute for Public Interest Representation, Georgetown University Law Center, has prompted the Commission to consider whether corrective advertising should be required in certain cases where advertisers make false or misleading claims concern-

ing health, safety or nutrition in connection with their products.

In addition to inducing initial Commission action, consumers' input has provided evidence or information the Commission has used in proceedings already in progress, in innumerable cases.

Thus, a single consumer or group can significantly affect the Commission's actions and decisions, leading to investigation or regulation of widespread business practices, simply by informing the FTC of these practices in a letter of complaint.

If the Commission staff decides to investigate a consumer complaint, the investigation may be "public," meaning that the fact that an investigation is under way, and details of the investigation, have been announced to the public in press releases; or "nonpublic," where either no announcement of an investigation is made, or an investigation is announced but no details are made available. Usually, industrywide investigations, where no individual member of the industry is being investigated, are announced, while cases against individual respondents are not. Currently, the Commission is considering changing its policy to provide for either routine disclosure of all parties under investigation, or complete nondisclosure.

The record of either type of investigation is closed to the public unless and until adjudicative or rulemaking proceedings are begun. At that point, several additional opportunities for public participation arise.

Adjudicative Proceedings

An adjudicative proceeding begins when, after a staff investigation, the Commission finds "reason to believe" that a business or industry is violating the law and issues a complaint stating its charges. The respondent has 30 days to answer. If the respondent does not admit the violation and accept an agreement to stop the offensive practices and comply with any restitutionary actions the Commission requires, a formal hearing is held before an administrative law judge (ALJ) named by the Commission.

- *The evidence and the decision*

An adjudicative hearing is similar to a court trial, with witnesses and formal rules of procedure and evidence. An individual or group can participate in the hearing stage of an adjudicative proceeding by joining as a party or filing an *amicus* brief (a brief supporting one party's position), but only if the Commission is convinced that this intervention is both appropriate and valuable, which may be difficult to achieve. In addition, participating in litigation may require technical expertise and a substantial investment of time and money, which many private citizens or consumer groups lack. For these reasons, active participation in the adjudicative hearing stage is rarely an inviting prospect.

After hearing the evidence and arguments, the ALJ issues an initial decision, which becomes the Commission's final order 30 days later unless a notice of intention to appeal is filed within 10 days or the Commission chooses to revise the order. Respondents can challenge a final Commission order in the United States Court of Appeals.

- *Consent orders*

Often, a case is settled before a complaint is issued, or after issuance of a complaint but before the beginning or completion of hearings, by agreement of the Commission and the alleged offender to a consent order. Consent orders generally state that the respondent, while neither admitting nor denying violation of any law, will discontinue certain practices. Consent orders also describe any affirmative actions the respondent is required to take.

It is when a proposed consent agreement is issued that consumers have their most meaningful opportunity to affect adjudicative decisions in the FTC. Proposed consent agreements are placed on the public record, including publication in the Federal Register, along with an analysis of the agreement prepared by the Commission staff to make it easier for the public to understand what the complaint is charging and the terms of the proposed agreement. Interested persons are invited

in the Federal Register notice to submit general or specific views, data or other comments on the proposed agreement within 60 days.

All comments received by the FTC during the 60 day period become part of the public record which the Commission considers in deciding whether or not, and in what form, to issue a final consent order. As a result of consumers' comments the Commission may decide to withdraw from the consent agreement and refer the matter back for further hearings, modify the proposed order, or accept the agreement and issue a final order.

Final consent orders are as binding on the consenting party as any other adjudicative order issued by the FTC.

To summarize, once an adjudicative proceeding has begun, a citizen or group can affect the conduct or outcome of the case primarily in two ways: by intervening as a party or filing a supporting brief (with the Commission's permission); or, as is usually more practical, by submitting comments on consent agreements for the Commission to consider in weighing its final decision.

Trade Regulation Rulemaking Proceedings

By far the greatest opportunities for consumers to influence FTC decisions occur in trade regulation rulemaking, as a result of the FTC Improvement Act. The Act calls for input from the public at several stages of rulemaking proceedings. In addition, it enables certain persons or groups that otherwise could not participate in TRR proceedings to do so, by authorizing the Commission to reimburse parties meeting certain eligibility requirements for the costs of their participation. To qualify for this compensation, a party must represent an interest which would not otherwise be adequately represented in that proceeding; that representation must be necessary for a fair determination of the issues; and the representative of that interest must be unable to participate without funding assistance (see Chapter 6).

As with the other types of FTC proceedings, the public's first opportunity to affect rulemaking is by bringing a problem to the Commission's attention. The decision to begin rulemaking is made by the Commission based on recommendations of the FTC staff, reflecting either the staff's own experiences or their receipt of consumer complaints or letters reporting illegal business acts or practices.

Consumers who want to become involved in FTC rulemaking beyond the letter writing stage may affect Commission action in several phases of TRR proceedings.

- *Rulemaking proceedings begin*

Rulemaking under the FTC Improvement Act begins when an FTC staff member is named as presiding officer to administer the proceedings, and the Commission publishes an *initial notice* in the Federal Register, setting out a proposed rule and issues to be addressed. Public comments, including any relevant opinions, views, and data, are solicited in this first notice. In addition, interested persons are invited to submit suggestions for issues to be addressed in the rulemaking proceedings. A reasonable time period within which all such comments must be received is determined and published by the presiding officer. It is important for consumers to raise issues of importance to them during that time, since once the designated issues are established, no new ones will be considered without special permission from the presiding officer.

Persons desiring reimbursement for participation in the hearings may apply to the Commission for a commitment of funding at any time after the initial notice of proposed rulemaking has appeared in the Federal Register *(see Chapter 6)*.

After a sufficient time to receive public comments and suggested issues, the presiding officer publishes a *final notice* in the Federal Register, enumerating the designated issues, time and place of hearings, and instructions for persons or groups wanting to participate at the hearings.

The public may continue to submit written comments, other than proposals of issues to be considered, until 45 days before the rulemaking hearings begin. Even if persons or groups do no more than submit comments, they can still have a significant effect on the outcome of a rulemaking proceeding, since all comments become part of the public record and are considered by the Commission in reaching its decisions. Thus, submitting comments in rulemaking proceedings is worthwhile and important right up until the deadline dates.

- *At the hearings*

On the dates set by the presiding officer hearings are held, following rules of fairness and due process rather than formal rules of procedure and evidence. In conducting the hearings, the presiding officer exercises considerable discretion. For example, he or she groups participants in each hearing according to their interests, to prevent duplication of efforts and testimony. Each group then selects a representative to present its point of view at the hearings. If the participants cannot agree on a representative, as often happens, the presiding officer chooses one.

At the hearings, participants, who may have conducted studies or other research on the issues being considered, may introduce written comments or oral testimony based on their findings as well as extensive records and exhibits. Further, they may introduce witnesses, including experts, supporting their positions.

The designated representative of each interest group is permitted to cross-examine witnesses at the hearing. This gives consumer representatives the opportunity to cross-examine industry representatives, among others.

- *After the hearings*

After hearings have been completed, participants may submit rebuttal statements, based on any testimony in the record which they wish to challenge. The presiding officer prepares a summary of the record and his or her initial findings and conclusions. The FTC staff also prepares a report containing its recommendations, based on the rulemaking record and the presiding officer's findings. When both reports have been published, participants and the general public may submit comments on any information in the entire rulemaking record for a period of 60 days, or for a longer period if the Commission extends the time allowed.

The Commission may, for good cause, grant extensions of the comment period. In the TRR proceeding on vocational schools, for example, when access to the hearing record was denied to the public for several days to allow microfilming of the record and compilation of an index facilitating review of the record, the Commission approved a new 60-day comment period to begin when the record was reopened.

After the final comment period has ended, the Commission determines whether to issue a final TRR and if so, in what form. Its decision is based on the entire rulemaking record, including the presiding officer's and staff reports and public comments received.

4 Currently Active Proceedings in the Bureau of Consumer Protection

Hundreds of proceedings of various types are ongoing in the Commission at the same time, each under the supervision of a presiding officer, staff attorney, administrative law judge, or other Commission official. Many of these proceedings, particularly those dealing with alleged violations of law rather than with rulemaking, are nonpublic. However, for detailed information on any public proceeding, a consumer can obtain the appropriate official's name and telephone number from the Bureau, and then contact him or her directly (see list of the most active proceedings now in progress and the officials administering them in Appendix B).

Among the activities in the Bureau of Consumer Protection, most consumer involvement has been in TRR proceedings. Currently, 16 TRR's of primary interest to consumers are in various stages of proceedings. These include TRR's to regulate vocational schools, unfair credit practices, mobile homes, food advertising, prescription drugs, hearing aids, health spas, funeral industry practices, protein supplements, over-the-counter (OTC) drugs, over-the-counter antacids, preservation of consumers' claims and defenses (holder in due course), used motor vehicles, ophthalmic goods and services (eyeglasses), revised care labeling of textile products and leather wearing apparel, and warranties.

While these rulemaking proceedings are in varying stages and many have already progressed past the hearing stage, nearly all are still open for some form of consumer participation, if only in the form of submitting comments for the Commission to consider in shaping a final rule.

As already noted, each TRR proceeding is administered by a different presiding officer, who determines dates, times and places for different stages of the proceedings. Whether hearings will be held in one or several locations, whether to extend deadlines, and various requirements of participation are generally left to the individual presiding officer's discretion. Thus, for specific information on participating in a particular rulemaking, interested parties should contact the presiding officer, through the FTC Bureau of Consumer Protection *(see Table II for a list of current TRR proceedings).*

TABLE II
STATUS OF CURRENT TRADE REGULATION RULEMAKING PROCEEDINGS
(SEPTEMBER 1, 1977)

Title of Rule	Date for Filing Proposed Issues	Date for Filing General Comments	Public Hearing Dates	Date for Submission of Witness' Prepared Statements & Exhibits	Current Status
Preservation of Consumers' Claims and Defenses	Closed	Closed	Concluded	Closed	Commission to reopen record for 60 days for comment on economic impact of abolishing holder in due course status; dates to be announced.
Advertising and Labeling of Protein Supplements	Closed	Closed	Concluded	Closed	Awaiting staff and Presiding Officer's reports
Vocational and Home Study Schools	Closed	Closed	Concluded	Closed	Both Presiding Officer's and staff reports have been issued, and period for public comments closed. Awaiting Commission ruling.
Credit Practices	Closed	Until 10 days before public hearings	9/12/77 Dallas 10/11/77 Chicago 11/7/77 San Francisco 12/5/77 Washington, DC	8/22/77 Dallas 9/16/77 Chicago 10/14/77 San Francisco 11/3/77 Washington, DC	
Food Advertising Phase I (Phases II & III to be announced)	Closed	Closed	Concluded	Closed	Awaiting staff and Presiding Officer's reports.
Retail Prices for Prescription Drugs	Closed	Closed	Concluded	Closed	Awaiting staff and Presiding Officer's reports.
Health Spas	Closed	Until 45 days before public hearings	9/12/77 Atlanta 10/17/77 San Francisco 11/28/77 New York City	8/22/77 Atlanta 9/26/77 San Francisco 11/7/77 New York City	
Over-the-Counter Drugs	Closed	Closed	Concluded	Closed	Awaiting staff and Presiding Officer's reports.

Hearing Aid Industry	Closed	Closed	Concluded	Closed	Presiding Officer's report issued; awaiting staff report, to open 60-day period for public comment.
Mobile Home Sales and Service	Closed	Until 10 days before public hearings	10/11/77 Washington, DC 12/5/77 San Francisco	9/19/77 Washington, DC 11/14/77 San Francisco	
Advertising of Ophthalmic Goods and Services	Closed	Closed	Concluded	Closed	Both Presiding Officer's and staff reports have been issued, and period for public comments closed. Awaiting Commission ruling.
Proposed Disclosure Requirements and Other Regulations Concerning the Sale of Used Motor Vehicles	Closed	Closed	Concluded	Closed	Awaiting staff and Presiding Officer's reports.
Amendment to TRR for Care Labeling of Textiles and Wearing Apparel	Closed	Closed	Concluded	Closed	Presiding Officer's report issued; awaiting staff report, to open 60-day period for public comment.
Over-the-Counter Antacids	Closed	Until 45 days before public hearings	To be announced	To be announced	
Full Warranty Duties	Closed	Closed	10/3/77 Chicago 11/7/77 Los Angeles 12/6/77 Washington, DC	3 weeks before each hearing date	

UPDATES ARE AVAILABLE FROM THE PAUL DOUGLAS CONSUMER RESEARCH CENTER

5 How Groups Have Participated in FTC Rulemaking

Numerous consumer groups have participated actively in TRR proceedings, their efforts ranging from filing general comments to conducting extensive research on industry practices and offering testimony at hearings. Because many of these groups have lacked time, funds or staff sufficient to support this participation in addition to carrying on their usual activities, they have often had to find additional resources to help prepare for the hearings.

Some consumer groups have successfully managed to take on such projects by subcontracting with experts, such as university professors knowledgeable in the subject being investigated, to conduct surveys or on-site interviews, digest secondary materials, or do other research.

Other consumer groups have cooperated and divided the work load. For example, one group participating in the funeral industry proceedings, Arkansas Consumer Research, subcontracted with Consumer Federation of America to conduct comparative research on state regulations. And in preparing for the health spa TRR proceeding, Consumers Union provided a legal analysis while California Citizen Action Group, working in conjunction with them, coordinated other preparations for the hearings. In still another case, where three consumer groups (Automobile Owners Action Council, San Francisco Consumer Action, and California Public Interest Research Group) applied to represent similar interests in the used car hearings, the work was divided geographically: AOAC appeared at hearings in the eastern states, and the California groups represented consumers at hearings in the western states.

Consumer organizations have found that working together is valuable not only to supplement their limited resources, but also to enable them to present a unified position in propounding their views. In submitting final comments on the proposed ophthalmic TRR, for example, the Americans for Democratic Action, which represented consumers at two of the five hearings, coordinated its approach to the issues with those who represented consumers at the other hearings, in order to present as strong a consumer position as possible.

The Funeral Industry Practices Rulemaking: A Case Study

How various consumer groups have gone about preparing to represent consumers' interests in TRR proceedings, and some problems encountered in using the still-new participation procedures established by the FTC Improvement Act, can be illustrated by a description of the funeral industry rulemaking proceeding. Eight citizens' groups took active roles in participating in the six hearings, held in six different cities between April and August 1976.

The funeral industry rule was proposed by the Commission in August 1975 in an initial notice inviting the public to submit comments and propose issues for inclusion in the rulemaking proceedings. Soon after that notice, a presiding officer was named.

In February 1976, the presiding officer published the final proposed rule and designated issues, allowing interested per-

sons to continue to submit comments for another three weeks. At the same time, he announced that public hearings would begin in sixty days, on August 20, 1976, in New York City. Hearings were then to move to Chicago, Seattle, Los Angeles, Atlanta and finally, to conclude in Washington, D.C. by August 6, 1976.

Several citizens' groups participated in the funeral industry proceedings, including Consumers Union; New York Public Interest Research Group; Continental Association of Funeral and Memorial Societies, Inc.; a coalition of the Consumer Affairs Committee of the Americans for Democratic Action and the National Council of Senior Citizens; Arkansas Consumer Research, assisted by Consumer Federation of America; California Citizen Action Group; and Central Area Motivation Program of Seattle. All of these groups applied for and received reimbursement for their costs of participation.

How these groups prepared to represent consumer interests varied widely. Several surveyed funeral industry practices in their own geographical areas, revealing local exploitation of the bereaved, consumer misconceptions about legal requirements for funerals, and consumer attitudes toward the need for government regulation of the industry. The results of the surveys indicated that abusive practices in the funeral industry were not, as some industry representatives claimed, rare occurrences or limited to a few isolated areas of the country. The names of subjects to be surveyed were obtained from assorted lists, including recent obituary columns, senior citizens groups, widows' clubs and social service organizations.

Many groups also conducted on-site visits by volunteer investigators to ascertain current funeral industry practices. One did a comprehensive state-by-state analysis of existing regulation of funeral practices, which revealed the inadequacy of state regulation, the lack of uniformity and the need for national reform of the funeral industry to prevent continued exploitation of the consumer.

Time shortages presented severe problems for several of the groups. Either because they applied to enter the proceedings late or because they were delayed due to negotiations with the FTC, some groups had to significantly curtail their proposed preparatory activities. For example, one group which originally had planned to survey consumers in four states ultimately had to focus solely on their own metropolitan area, due to time limitations before their hearings were to begin.

Several groups consulted with attorneys and persons familiar with funeral practices including clergy, psychiatrists, economists, and investigative reporters to acquire an expertise in as many dimensions of the designated funeral industry issues as possible, ranging from the economic to the emotional impact of funeral practices.

Some of the participating consumer groups had had experience in dealing with the funeral industry before preparing for the hearings, and were acknowledged experts on the subject. New York PIRG, for example, had previously published several funeral cost studies and guides to funeral-related issues in New York. Similarly, Consumers Union, at the time they applied to represent consumers' interests at a hearing, had been preparing for the previous year and a half a book of approximately 350 pages to guide readers in arranging funerals.

Other groups, however, had had no prior involvement with or exposure to funeral issues and still contributed valuable information and testimony on behalf of consumers, based on research they conducted specifically for the hearings.

Some of the groups represented consumer interests in general, while others represented more specialized groups of consumers. For example, the Americans for Democratic Action/National Council of Senior Citizens specifically represented the viewpoint of the elderly towards funeral industry practices and the unique problems which they encounter.

All of the groups participating in the hearings presented witnesses, including

consultants, researchers, consumers, and experts in the funeral practices field. At each hearing, attorneys representing industry, the FTC, and consumer interests vigorously cross-examined opponents' witnesses. At times, the consumer representatives' points of view differed not only from those of witnesses presented by the funeral industry, but from those of the FTC staff as well. On those points they did not hesitate to take issue with the staff and assert independent opinions or arguments on behalf of what they believed to be consumers' best interests.

After the hearings, some of the hearing participants submitted rebuttal testimony. This entailed reviewing the record, which included over 40,000 pages of transcript and voluminous other materials. Many others had staff, time or money shortages and, having already expended more time on the proceedings than they had anticipated, decided against filing rebuttal comments or joined with groups with similar interests to prepare rebuttal, avoiding duplication, economizing, and presenting a unified consumer position.

The Impact of Consumer Participation in Rulemaking

The Commission has not, to date, issued a final decision on any of the TRR's in progress since the FTC Improvement Act became effective, so the impact of consumer participation on the final outcome of rulemaking proceedings cannot be determined with certainty. However, it is already clear that consumer representatives' participation has substantially benefitted rulemaking in several ways.

One way consumer participation has contributed notably to FTC rulemaking proceedings has been by providing new information for the presiding officer and the Commission to consider. Consumer groups' research and testimony at rulemaking hearings have furnished information on the issues, such as data on local consumer sentiments and business practices, that the FTC could not feasibly have gathered. For example:

- New York Public Interest Research Group conducted a survey in preparation for hearings on the proposed funeral industry TRR, in which they compiled data on local citizens' perceptions of their options, rights and legal obligations in making arrangements for funerals. Other groups did comparable surveys in their own geographical areas.
- To prepare for a hearing on a proposed TRR concerning over-the-counter drugs, California Citizen Action Group surveyed and assessed consumer reliance on drug advertisements, and discovered that the vast majority of consumers want the government to prevent drug companies from making claims in their advertisements that they cannot prove.
- In the FTC's rulemaking on food advertising, Consumers Union presented detailed comments supporting greater nutritional information in food advertising, providing information and posing questions that no other participant had raised.
- In the TRR proceeding concerning the hearing aid industry, the National Council of Senior Citizens disputed industry contentions and bolstered the proposed rule by submitting a model State statute it had prepared, illustrating consumer views through production of 80 affidavits and several consumer witnesses, and presenting expert witnesses.

Consumer representatives have, further, brought to hearings a special expertise which the FTC may have lacked despite diligent preparation for the hearings, especially where the group has previously dealt with the industry practices in question. For example, in reference to the National Council of Senior Citizens' participation in the hearing aid rulemaking, the United States Senate Committee on Governmental Affairs in July 1977 stated in a study on federal regulation, ". . . given the National Council's deep involvement with this issue, it is . . . unlikely that the FTC staff could match the Council's depth of

understanding of the problems faced by senior citizens in this matter."*

In addition, as some witnesses who would not be willing to testify for either the FTC or industry are willing to do so for a consumer interest, consumer representation has benefitted the proceedings by producing some testimony which might otherwise have been unavailable.

Finally, consumer participation has contributed to the efficiency of the rulemaking process. In hearings on the proposed over-the-counter drug rule, for example, when some industry representatives sought several continuances in the proceedings, California Citizen Action Group requested that the hearings continue without delay, as the postponements would have resulted in a waste of the government's resources and would have caused serious financial hardship to consumer representatives attending the hearing, with no foreseeable benefits. Weighing the arguments, the presiding officer ultimately ordered that the hearings end two weeks earlier than originally scheduled.

Presiding officers and Commission staff members have often quoted extensively from consumer groups' studies and findings in their reports to the Commission after hearings have concluded. In turn, the Commission has frequently relied heavily on these same survey and research results in testimony before Congress. The tremendous value of evidence presented by consumer representatives at TRR hearings seems clear.

*U.S. Senate Committee on Governmental Affairs, *Study on Federal Regulations, Vol. III: Public Participation in Regulatory Agency Proceedings* (July 1977), page 100.

6 Compensation for the Costs of Participating in FTC Rulemaking

Central to consumers' ability to utilize the participation provisions of the FTC Improvement Act are §202(h) of the Act and §1.17 of the Commission's Rules of Practice, which expressly authorize funding for the costs of participation in TRR proceedings for certain participants who could not otherwise take part in the proceeding. The Act states:

> The Commission may provide compensation for reasonable attorneys fees, expert witness fees, and other costs of participating in a rulemaking proceeding under this section to any person (A) who has, or represents, an interest (i) which would not otherwise be adequately represented in such proceeding, and (ii) representation of which is necessary for a fair determination of the rulemaking proceeding taken as a whole, and (B) who is unable effectively to participate in such proceeding, because such persons cannot afford to pay costs of making oral presentations, conducting cross-examination, and making rebuttal submissions in such proceeding.

The act authorizes the Commission to spend up to $1 million per fiscal year to persons who meet these statutory requirements. Under this authority, Congress appropriated $500,000 to be used for compensation funds in Fiscal Year 1976, and the same amount for Fiscal Year 1977.

The Commission has interpreted this section of the Act liberally to allow for broad participation in TRR proceedings by eligible groups. Thus, a group need not be indigent to be deemed unable to "afford" the costs of participating, but may qualify for funds as long as it lacks readily available funds which could be devoted to that purpose.

The Commission has interpreted the statutory wording "making oral presentations, conducting cross-examination, and making rebuttal submissions . . ." to include as appropriate for funding all reasonable forms of active participation in TRR proceedings.

Under the terms of the FTC Improvement Act, compensation is authorized for actual costs incurred in participating in rulemaking proceedings, including filing rebuttal and post-hearing comments, but not for costs incurred in preparing an application for funding, although these expenses may be both necessary and substantial.

Detailed Guidelines for participating in rulemaking proceedings beyond those set forth in the Rules of Practice were issued by the FTC on June 14, 1977 in the form of two booklets. One of the booklets, "Rulemaking and Public Participation Under the FTC Improvement Act," generally describes rulemaking and public participation procedures under the FTC Improvement Act. The other, "Applying for Reimbursement for FTC Rulemaking Participation," is a step-by-step guide explaining how, where and when to apply for reimbursement for participation in FTC rulemaking proceedings, and includes a sample budget form which may be submitted along with the application (see Appendix C). Both are available at no cost from the FTC.

Allowable Expenses

Reasonable expenses of participation for

which compensation funds may be authorized include costs of conducting surveys, investigations and other research, such as clerical assistance, postage, transportation, printing, supplies, telephone bills, and other expenses reasonably incurred; certain overhead costs, such as rent and regular telephone bills, on a prorated basis; salaries of staff involved in the hearings, for the number of hours spent on the project; preparation and presentation of consumer and expert witnesses, for which up to $147 per day may be authorized; and transportation and per diem to cover costs of attending hearings out of the participant's geographical area.

Attorneys fees

The Commission has a sliding scale for attorneys fees based on the number of years the attorney has been out of law school. Allowable fees range from $21 per hour for an attorney just out of law school to a maximum of $42 per hour for attorneys with 8 years of experience or more.

An exception to the FTC's attorneys fee rate scale is made for attorneys already on the staff of the organization they will be representing at the hearings. In this situation, the FTC will reimburse the organization at the normal hourly rate of the attorney on staff, plus prorated costs of the office overhead and of the employee benefits which the organization provides for that attorney.

Attorneys retained to assist an organization receiving FTC participation funds may not receive a fee higher than that set by the FTC scale, by charging the organization a sum in addition to the FTC compensation. The FTC asserts that if an organization can pay part of a lawyer's fee, that is an indication that it is not sufficiently needy to qualify for reimbursement. In such a case the FTC will refuse to pay any portion of the fee for the outside attorney.

Applications

Applications to receive compensation for participation in TRR proceedings may be filed with the Special Assistant for Compensation, Office of the Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, at any time after an initial notice of proposed rulemaking is published in the Federal Register.

According to the FTC's Rules of Practice and its June 1977 Guidelines, an application should contain statements describing the applicant's interest in the proceeding; why representation of that interest is necessary for a fair determination of the proceeding; why the interest would not otherwise be adequately represented; an estimate of expenses to be incurred; and the applicant's organizational and financial status. In addition, the application must include an explanation of why the applicant cannot effectively participate in the rulemaking proceeding without financial assistance, including information concerning the economic stake of the interest involved as compared with the costs of participation; and the resources of the applicant, including the feasibility of contributions by parties sharing the applicant's interest.

Applicants may apply for funds to participate in any or all phases of rulemaking proceedings, including preparation of oral testimony and/or cross-examination of witnesses at hearings, filing rebuttal statements after hearings have ended, and submitting post-hearing comments after the staff and presiding officer's reports have been placed on the record. An applicant may request funds to participate in several phases of the proceeding or may initially seek funds for one phase and later expand the request to include other participation as well.

Requests for funding to prepare rebuttal should not be filed until after hearings are over, so that applicants can state with some specificity which issues they intend to rebut. Similarly, an application for funds to prepare post-hearing comments should be submitted after the applicant has read either the presiding officer's or staff's final report or both.

Criteria Used in Awarding Funds

Often, a request for funds is denied because an applicant fails to provide sufficient information for the Commission to evaluate whether the proposed participation will be necessary and valuable to a full and fair rulemaking decision. While no mechanical test exists for evaluating applications for funding, the June 1977 FTC Guidelines indicate that the Commission's decision on whether or not applicants' participation will be valuable and their interests not already represented in the proceedings (and thus, whether or not to award compensation) is primarily based on what interests applicants will represent, how they propose to participate, what type of information they will contribute, and their expertise in the subject at issue or related matters.

Persons seeking participation funds should contact the presiding officer before submitting an application, to find out the current state of the rulemaking record so that their proposed contribution will not duplicate activities already performed or proposed by others. It is important also, in applying for funds, to be certain of filing deadlines for various stages of the proceedings.

Advances

Once participants are authorized to receive compensation funds, they may request payment of those funds in advance to help finance the costs of preparing for the proceedings. Generally, the Commission will grant an initial advance of up to 50% of a participant's authorized budget. As participants proceed with their activities, they may request additional monies which will generally be granted on a showing that the money already advanced has been properly spent on the rulemaking proceedings.

Cost Overruns

Many groups which have participated in past proceedings have considerably underestimated the amount of time the project would require, resulting in insufficient cost estimates to cover their actual expenses. The Commission has allowed requests for supplemental funds where justified, such as where preparation of surveys or other evidence was more difficult and took more time than anticipated, rulemaking hearings lasted longer than originally scheduled, or more time was required for preparation of rebuttal statements than expected. For example, in the funeral industry TRR proceedings, where initially the Commission granted participants compensation of over $60,000, supplemental funding of $23,000 was approved after participants provided detailed accountings of necessary expenses which justified their additional requests.

However, participants committing time or money beyond the amount authorized should recognize the possibility that their requests for additional reimbursement may not be approved. All, part or none of the request may be granted.

Compensation Awards Vary

To date, the Commission has approved over $829,000 to reimburse participants for their expenses in 16 TRR proceedings. The vast majority of these recipients have been nonprofit citizens' groups. Approved grants have ranged from $200 for groups simply presenting oral testimony, to over $98,000 for the National Consumer Law Center in Boston to represent consumer interests in hearings on the proposed credit practices rule, including conducting studies, preparing and presenting witnesses, and cross-examining witnesses at the hearings.

The amount of reimbursement funds granted in various TRR proceedings has also varied widely *(see Table III)*. In the vocational school proceedings, for example, compensation funds amounted to approximately $30,000. The funeral industry proceedings involved grants of over $82,000 in reimbursement money. And in food advertising proceedings, to date, over $150,000 in participation funds has been authorized by the Commission. Of the total

reimbursement monies granted by the Commission so far, 46% has been allocated to pay attorneys or law-related costs, and 54% to cover other types of expenses. Groups which have received compensation funds to participate in one or more TRR proceedings are listed in Appendix D.

The Administrative Conference, an independent federal agency, is currently compiling a comprehensive report on how the FTC Improvement Act rulemaking provisions, and especially the compensation program, have been working. The Conference's research includes interviews of FTC staff people, presiding officers, hearing participants and others. Their findings and recommendations will not be available to the public until the report, which is expected in late 1977, is issued.

TABLE III
TOTAL OBLIGATED COMPENSATION PER RULE
(as of May 1, 1977)

Rule	*Amount*
1. Vocational schools (proposed Aug. 15, 1974)	$30,475.00
2. Unfair credit practices (proposed Apr. 11, 1975)	98,357.24
3. Mobile homes (proposed May 19, 1975)	26,182.00
4. Food advertising (proposed June 4, 1975)	150,917.48
5. Prescription drugs (proposed June 4, 1975)	2,070.00
6. Hearing aids (proposed June 24, 1975)	44,106.00
7. Health spas (proposed Aug. 15, 1975)	8,850.00
8. Funeral industry (proposed Aug. 29, 1975)	83,336.58
9. Protein supplements (proposed Aug. 29, 1975)	33,430.30
10. Over-the-counter drugs (proposed Nov. 11, 1975)	67,847.00
11. Preservation of consumers' claims and defenses (proposed Dec. 19, 1975)	3,093.25
12. Used motor vehicles (proposed Dec. 23, 1975)	113,016.20
13. Ophthalmic goods and services (proposed Dec. 23, 1975)	112,827.00
14. Revised care labeling (proposed Jan. 26, 1976)	47,352.67
Total	821,860.72

Reprinted from: U.S. Senate Committee on Governmental Affairs, *Study on Federal Regulation, Volume III: Public Participation in Regulatory Proceedings* (July 1977), page 103.

7 Major Consumer Protection Statutes Administered by the FTC

The Federal Trade Commission administers several consumer protection statutes which provide it with effective consumer protection powers. Most notably, these include:

- *The Federal Trade Commission Act.* This is the statute which created the FTC. It prohibits "unfair methods of competition" and "unfair or deceptive acts or practices."
- *Fair Packaging and Labeling Act.* This Act prohibits unfair or deceptive packaging or labeling of certain consumer commodities.
- *Truth in Lending Act.* The purpose of this Act is to assure meaningful disclosure to consumers of information affecting how much credit is going to cost them, to enable them to compare various credit terms available to them and to avoid the uninformed use of credit. The Commission enforces Truth in Lending requirements over issuers of credit cards, finance companies, retailers and certain other creditors.
- *Fair Credit Reporting Act.* To protect consumers against circulation of inaccurate credit reports, this Act ensures that consumer reporting activities are conducted fairly and with regard to the consumers' right to privacy. The Act applies to all credit bureaus, investigative reporting companies, detective and collection agencies, lenders' exchanges, and computerized information reporting companies. It gives consumers the right to know what information is contained in consumer reports about them, and to have erroneous information that may have been the basis for a denial of credit, insurance, or employment corrected.
- *Magnuson-Moss Warranty-Federal Trade Commission Improvement Act.* Among its provisions, Title I of the Act mandates that the Commission issue rules concerning warranties for consumer products.

Title II of the Act bolsters the FTC's ability to deal with consumer problems by confirming its authority to issue substantive trade regulation rules, and provides funds to ensure meaningful opportunities for public participation.

In addition, the Act empowers the Commission to obtain enforcement of its own process, such as subpoenas, directly in court (previously, enforcement of process could only be achieved by requesting the Justice Department to initiate proceedings). Finally, the Act enables the FTC to seek consumer redress and civil penalties for rule violations in the courts.

- *Fair Credit Billing Act.* The Act gives consumers procedural rights when alleging errors in billing statements, and requires creditors to correct such errors.
- *Equal Credit Opportunity Act.* This statute (including amendments) seeks to protect consumers from denial of credit based on sex, marital status, age, religion, national origin, receipt of public assistance, or good faith exercise of rights under the Consumer Credit Protection Act.
- *Consumer Leasing Act of 1976.* This Act requires cost and other disclosures about the rights and obligations of potential rental customers (lessees), before they sign a lease for personal property (non-realty) non-farm items to be used primarily for personal, family or household purposes.

These and other Acts which the Commission administers are powerful vehicles for consumer protection, but much of their effectiveness depends on active contribution of information by an informed public. Since the FTC relies on letters and complaints to alert it to which industries or businesses are violating the laws, if individuals are unaware of their rights under these statutes, they will not provide the Commission with this necessary information and the Commission's effectiveness in aggressively upholding consumer protection laws will be impaired. Explanations of these statutes in non-technical language are available from the FTC's Public Reference Branch in Washington, D.C., as well as from some of the FTC regional offices.

8 Information and Materials Available from the FTC

Persons with general questions about the FTC, or who need information but do not know which division of the Commission to contact, should write to the FTC's Washington headquarters, where their letters will be channeled to the appropriate office.

The FTC publishes numerous pamphlets, booklets, and announcement sheets to keep the public informed of Commission activities. Most of this information is available, without charge, from either the FTC's Office of Public Information or the Public Reference Branch.

Office of Public Information

The Commission's Public Information office publishes three types of informational releases, which consumers may obtain free of charge by placing their names on that office's mailing list.

- *FTC News Summary.* A weekly publication which includes all news releases issued during the previous week.
- *FTC News Release.* Contains the same information as the news summary, but is issued more immediately. The consumer must obtain approval from the Public Information office to be placed on this mailing list, since he or she can get the same information in the news summaries.
- *FTC News Calendar.* Lists meetings, hearings and speeches to be held during the coming week.

Interested persons can have their names placed on the mailing list by sending their name and address to the Office of Public Information, Federal Trade Commission, Room 496, 6th & Pennsylvania Avenue, N.W., Washington, D.C. 20580, (202) 523-3830.

Public Reference Branch

Other materials, explaining consumers' rights under FTC-administered statutes or reporting FTC activities on the public record, are available from the Public Reference Branch, Federal Trade Commission, Room 130, Washington, D.C. 20580, (202) 523-3598. Some of these may also be obtained from regional offices.

A booklet entitled "Federal Trade Commission—List of Publications," lists many of the pamphlets available from the Public Reference Branch, including copies of the statutes enforced by the Commission; instructional aids for educators, local groups, or agencies to use in conducting education/information programs; and annual reports, industry and consumer guides, trade regulation rules and various other decisions and orders issued by the Commission. In addition to that booklet, consumers can obtain from the Public Reference Branch pamphlets explaining their rights and warning against deceptive practices, including among others:

A Money Saving Offer—Truth in Lending Takes the Wraps Off Credit (Buyer's Guide #12)
Care Labels (Buyer's Guide #10)
Case Study: How to Use Truth in Lending: The Grey Family Finances an Auto Purchase
Consumer Education (Consumer Bulletin #13)
Consumer Information: Catalogue of Selected Federal Publications of Consumer Interest
Don't Be Gypped (Consumer Bulletin #8) (Buyer's Guide #8)

Equal Credit Opportunity Act (pamphlet and full text)
Fair Credit Billing Act
Fair Credit Reporting Act, Know Your Rights Under, A Checklist for Consumers (Consumer Bulletin #7) (Buyer's Guide #7)
Federal Wage Garnishment Law, Basic Information (WHPC Publication 1279)
Fight Back! Don't Let the Gyp Artists Get Away With It (English/Spanish)
Franchise Business Risks (Consumer Bulletin #4) (Buyer's Guide #4)
Freezer Meat Bargains (Consumer Bulletin #5) (Buyer's Guide #5)
FTC—What It Is and What It Does
Look for That Label (Consumer Bulletin #6) (Buyer's Guide #6)
Mail Order Insurance (Consumer Bulletin #1) (Buyer's Guide #1) (English/Spanish)
National Consumer Protection Hearings (1968)
Protection for the Elderly (Consumer Bulletin #9) (Buyer's Guide #9) (English/Spanish)
Shopping By Mail? You're Protected!
Sold Out Supermarket Specials (Buyer's Guide #11)
Three Days to Cancel: Door-to-Door Sales (Buyer's Guide #15)
Truth in Lending, What It Means to You (Federal Reserve Board) (English/Spanish)
Unordered Merchandise (Consumer Bulletin #2 (Buyer's Guide #2) (English/Spanich)
Warranties: There Ought to Be a Law . . . There Is!
Which Job Training Will You Choose? (Buyer's Guide #14)
Vocational School: A Guidebook for Selecting (Consumer Bulletin #13) (Buyer's Guide #13)

The Public Reference Branch also has on file, available to the public, all FTC documents on the public record, including transcripts and other related papers.

9 Other Methods of Obtaining FTC Records and Information

In some cases individuals or organizations may need information which is not available through the above-mentioned channels. Two recently enacted statutes, which apply to most federal agencies including the FTC, may provide access to this information:

Freedom of Information Act

The Freedom of Information Act, enacted in 1966 and amended in November 1974, has been one of the primary tools used by the public to obtain information not on the public record which is needed to participate more fully in FTC decision-making. The Act requires the government to supply certain types of information on request, and to notify the public of agency procedural and substantive rules.

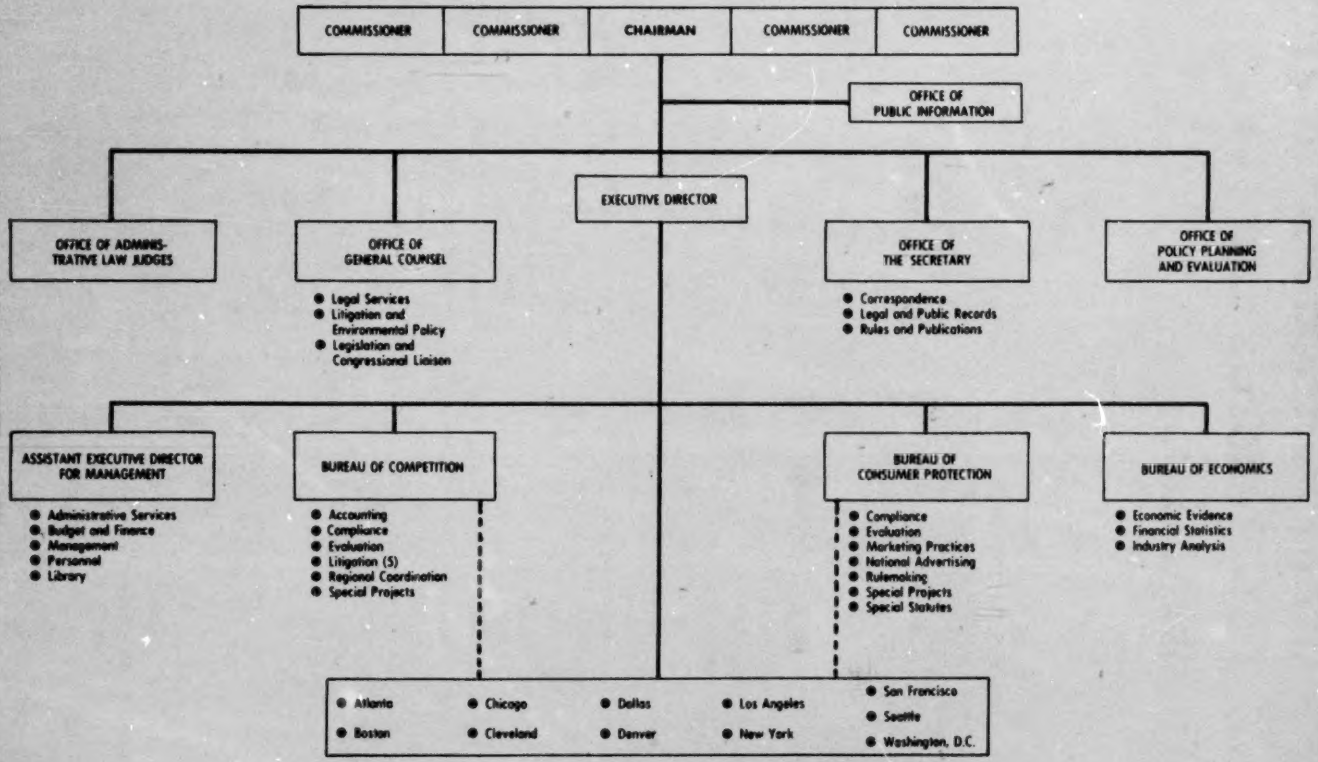
Persons requesting information under the Freedom of Information Act must label their letters "Freedom of Information Act Request," and specify what documents they are seeking clearly enough for the Commission staff to know what to look for and send. Generally those requesting information from the FTC under the Act must pay 10¢ a page copying costs for anything over 99 pages. However, the Secretary of the Commission may waive fees if he or she determines that it is in the public interest to provide the information. Consumer groups making Freedom of Information requests to better enable them to represent consumer interests may be granted a waiver of fees. Certain categories of information, such as inter-and intra-office memos, and trade secrets and certain financial information of businesses and industries, are exempt from disclosure under the Freedom of Information Act.

Government in the Sunshine Act

The Government in the Sunshine Act, which went into effect March 12, 1977, should also increase the public's access to the FTC. Among other provisions, this statute requires open meetings of multi-member agencies in certain circumstances and limits private communications within the agency on some matters.

To comply with the requirements of the Government in the Sunshine Act, the FTC has established a special mailing list for persons wanting to receive notices of Commission meetings. These notices, mailed weekly by the Office of Public Information, announce the time, place, and subject matter or agenda of the meeting; whether it is open or closed to the public; and where requests for further information on the meeting should be directed. The same information, as well as notice of changes in the agenda made after the mailing has been posted, is recorded on a telephone message in Washington, D.C. at (202) 523-3806.

FEDERAL TRADE COMMISSION



Reprinted from: United States Government Manual 1976/1977, page 532.

APPENDIX B
ACTIVE FTC PROCEEDINGS

Subject	*Contact*	*Telephone**
Air Conditioners—Central (Energy Labeling)	Parker	724-1471
	Sanchez	724-1481
Air Conditioners—Room (Energy Labeling)	Sanchez	724-1481
Amplifiers	Lane	254-6094
Analgesics		
(American Home)	Donegan	724-1453
	Neibrief	724-1473
(Bristol-Myers)	Skiles	724-1474
	Fisherow	724-1495
(Sterling Drugs)	Orlans	724-1490
	Bloomfield	724-1496
Antacids (OTC)	Brewer	724-1479
	Clewett	724-1561
ASH Petition	Hatchl	724-1458
	Gordon	724-1560
Auto Repair (Telephone Inquiries)	Milton, C.	523-3555
	Riotto, J.	523-3462
Auto Truck Model Year	Sailer	523-3940
Automobile Fuel Consumption	Foldes	724-1488
Auto Warranty	Leach	724-1100
	Rubin, A.	724-1100
Bell and Howell	Halverson, S.	523-3812
Beneficial Loan (Tax Prep. Serv.)	Fix	523-3812
Bestline Products Inc.	Clements	254-6135
Billing Disputes	O'Donnell	724-1157
	Dea	724-1175
Block Drug	Heller	724-1467
	Orlans	724-1490
Bristol-Meyers (Analgesics)	Skiles	724-1474
	Fisherow	724-1495
Business Opportunities	Kopp, G.	523-3912
	Rodemeyer, M.	523-3510
Care Labeling	Lamb	724-1566
	Lefevre	724-1188
Cavanagh	Tureck	523-3897
	Thornton	523-3913
Century 21	Wilmore	523-3529
Certifications	Mooney	523-3461
Children's Advertising	Ratner, E.	724-1456
Chrysler	Orlans	724-1490
	Bogard	724-1475
Cigarettes	Hatchl	724-1458
	Gordon	724-1560
Cigarettes—Civil Penalty Actions	Boyle	254-8301

*Area code (202) unless otherwise indicated.

Citizens Band Radios	Diercks 254-9491
	Kelly 634-1449
Compensation	Naradzay 523-3436
Complaints, Consumer, local	254-7700
Condominiums	Wilmore 523-3529
Consumer Leasing	Dea 724-1175
Contests	Dosek 523-3828
Control Data	Steinman, E. 523-3949
Cooling-off Period for Door-to-Door Sales	Gross, W. 254-6145
Corrective Advertising Petition (Kramer Petition)	Field 724-1447
	Fisherow 724-1495
Cosmetics	Ratner 724-1456
Coupons	Johnson, E. 724-1143
Credit Balances	Reffkin 724-1187
Credit Billing	Dea 724-1175
Credit Cards	Peeler, C. 724-1568
Creditors Remedies	Williams, D. 523-3596
Debt Collection	Aldhizer 724-1182
Deceptive Advertising, local	254-7700
Deceptive Pricing Guide	Angelone 523-3452
Dentists	Sheppard
Direct Selling Schemes	Steinman, E. 523-3949
Dishwashers (Energy Labeling)	Bogard 724-1492
Drug Antisubstitution	Holbrooke 523-3391
	Holmes 523-3945
Drug Price Disclosure	Daynard, M. 523-3935
Dryers (Energy Labeling)	Sanchez 724-1481
	Freundlich 724-1476
Electronic Video Games	Koman, J. 254-7937
Encyclopedias	Fix 523-3812
Endorsements & Testimonials	Fisherow 724-1495
Energy Efficiency Labeling	Parker 724-1471
Equal Credit Opportunity Act	Goldfarb 724-1181
Exclusionary Rule	Fisherow 724-1495
Eyeglasses	Eisenstein 523-3469
Fair Credit Billing	Isaac 724-1569
Fair Credit Reporting Act	Peeler 724-1568
	Grimes 724-1567
Fair Packaging & Labeling Act	Johnson, E. 724-1143
Flammable Fabrics	Consumer Prod. Saf. Comm.
Flatware	Dosek 523-3828
Food Advertising	Donegan 724-1453
	Neibrief 724-1473
Food Pricing	Easton 523-3652
Ford Mileage	Sanchez 724-1481
	Ratner 724-1456
Fortune 500 Survey	Sanger 254-6128
Franchise Rule	Kopp, G. 523-3912
	Rodemeyer, M. 523-3510

Free	Angelone	523-3452
Freezers (Energy Labeling)	Bloomfield	724-1496
	Gordon	724-1560
Fuel Economy	Franke	254-6498
Fuel Economy Advertising	Barton	724-1484
	Foldes	724-1488
Funerals	Angel	523-3856
Furnaces (Energy Labeling)	Sanchez	724-1453
Furniture Guides	Lane	254-6094
GAC (Land Sales)	Carrigan	254-8300
Gasoline Mileage	Foldes	724-1488
	Barton	724-1484
Generic Substitution	Holbrooke	523-3391
	Holmes	523-3945
Genesco	Reffkin	724-1187
Great Western United	Boyle	254-8301
Grocery Stores	Easton	523-3652
Grolier, Inc.	Fix	523-3812
Guarantees	Laden	724-1145
	Rubin, A.	724-1100
Hair Products	Ratner, E.	724-1456
Health Spas	O'Brien, J.	
Hearing Aids	Hatchl	724-1458
	Newburg-Rinn	724-1483
Hobby Protection Act	Dingfelder	724-1141
Holder-in-Due-Course	Diercks	254-9491
	Shao, R.	254-8302
Home Heating (Not Including Furnaces Energy Labeling)	Rothbard	724-1450
	Bogard	724-1475
Home Improvements	Dosek	523-3828
Horizon	Dowdy	523-3909
Household Furniture	Lane, C.	254-6094
Humidifiers—Dehumidifiers (Energy Labeling)	Lewis	724-1498
Idea Promotion Industry	Rodemeyer	523-3510
	Kopp, G.	523-3912
Individual Retirement Accounts	Deal	523-3377
Informal Dispute Settlement Procedure	Schroeder	523-3935
Jewelry (General)	Dosek	523-3828
Jewelry (Gold & Silver Content only)	Thornton	523-3913
Koscot	McColgin	523-3388
	Clements	254-6135
Kroger	Easton	523-3652
Land Sales	Steinman	523-3950
Layaway	O'Donnell	724-1157
Lear Siegler	Gross	254-6145
Life Insurance Price Disclosure	Fix	523-3812
	Epstein	523-3885
Light Bulb Rule	O'Brien	254-6764

Listerine	Koman	254-7937
Mail Order Rule	Binderman	254-9492
	Diercks	254-9491
Market Basket Survey	Angelone	523-3452
Mobile Home Rule	Stuart, P.	523-3933
Mobile Homes	Taylor, C.	523-3660
Model Year of Auto (Misrepresentation of)	Sailer	523-3940
Negative Option Rule	Hodapp, L.	254-5341
New Car Damage	Siracusa, J.	254-6106
Nursing Homes	Taylor, E.	
Nutrition	Donegan	724-1453
	Neibrief	724-1473
Occupational Licensure	Trause	
Ophthalmic Goods & Service	Latanich	523-3432
Over-the-Counter Drugs (OTC)	Brewer	724-1479
	Clewett	724-1561
Packaging/Price	Johnson, E.	724-1143
Plants		(206) 442-4655
Plastics Rule	Howerton	254-6134
Postal Service Matters	Thornton	523-3913
	Dosek	523-3828
Power Mower Round	Brewer	724-1479
Premiums	Zacharias	724-1492
Prescription Drugs	Holbrooke, L.	523-3391
	Daynard	523-3935
Prescription Eyeglasses TRR	Latanich	523-3446
Pricing Guides	Angelone	523-3452
Protein Supplements		
Public Rulemaking Participation	Naradzay	523-3868
Pyramid Sales	McColgin	523-3388
Radio TV Guides	Lane	254-6094
Rain Checks	Easton	523-3652
Readers' Digest	Ryder	254-5342
Real Estate Brokers	White, M.	523-3563
	Williams, D.	523-3596
Recycled Oil	Aldhizer	724-1182
Refrigerators (Energy Labeling)	Bloomfield	724-1496
	Gordon	724-1560
Refund Refusal		
(if Door-to-Door)	Gross	254-6145
(if Retailer)	Easton	523-3652
(if Mail Order)	Binderman	254-9492
Retail Credit	Russell	724-1156
RN Numbers	Mills	724-1109
Safeway	Easton	523-3652
SCM	Skiles	724-1474
	Lewis	724-1498
Service Contracts	Kanter	724-1100

Service Corp. International	Gross	254-6145
Standards & Certification	Mooney	523-3461
	Schroeder	523-3935
Sterling Drugs (Analgesics)	Orlans	724-1490
	Bloomfield	724-1496
Supermarkets—Unavailability & Overpricing	Easton	523-3652
Tax Preparation	Fix	523-3812
Television Sets (Energy Labeling)	Gordon	724-1560
Textile, Wool, & Fur Labeling Act	Mills	724-1109
Time Sharing (Vacation)	Stuart	523-3746
	Warder, N.	523-3934
Toy Manufacturers	Jung	254-6107
Transmissions	Sailer	523-3940
Travel Industry	Miller, S.	523-3392
	Boston Regional Office	
Truth-in-Lending Act	O'Donnell	724-1157
	Peeler	724-1568
Uncle Ben's Rice	Siracusa, J.	254-6106
Undelivered Mail Order Rule	Binderman	254-9492
	Diercks	254-9491
United Buying Services	Rosenman	523-3827
United Systems, Inc.	Gross	254-6145
	Jung	254-6107
Universal Product Code	Easton	523-3652
Unnamed Users of Olympic Endorsement	Fisherow	724-1495
Unordered Merchandise	Williams, D.	523-3909
Used Cars	Phillips	523-3935
	Daynard	523-3935
Used Oil	Aldhizer	724-1182
Vacation Certificates	Stuart	523-3746
	Warder, N.	523-3934
Vending Machine Contract	Rodemeyer	523-3510
Veterinarians	Daw, P.	
Vocational Schools	Golden	523-3445
Warranty	Miller, R.	724-1100
	Leach	724-1100
Washers (Energy Labeling)	Lewis	724-1498
Watch Industry Guideline	Dosek	523-3828
Water Heaters (Energy Labeling)	Parker	724-1471
Weaver Airline	Diercks	254-9491
	Hodapp	254-6911

Source: Federal Trade Commission, August 1977

APPENDIX C
APPLYING FOR REIMBURSEMENT OF FTC RULEMAKING PARTICIPATION*

Introduction

This booklet explains how you apply for reimbursement for participation in a Federal Trade Commission rulemaking proceeding if the interest you have or represent cannot be presented adequately without compensation. Before you apply you should make sure that you understand the rulemaking process and the statutory criteria used to determine your eligibility for compensation. The rulemaking process itself and the program set up to review compensation applications are explained in another booklet, "Rulemaking and Public Participation Under the FTC Improvement Act."

Choosing Phases of Participation

Phases of participation are (A) *preparation* (preparing written comments or oral testimony prior to hearing), (B) *presentation* (presentation of oral testimony and/or cross-examination of other witnesses at hearing and/or filing rebuttal statements after the hearings have concluded), and (C) *post-hearing participation* (submitting post-hearing comments after the staff and Presiding Officer's reports have been placed on the record).

You need not file a complete application at the outset. You may ask for compensation for one type of participation immediately and broaden your application after further study. This will allow rapid decisions on those types of participation that require immediate response and more detailed preparation and review of others. Your performance on one phase will, of course, be considered in the review of applications for participation in later phases.

You should not submit an application for post-hearing rebuttal participation until after the hearings are over. At that time, you will be able to state with some specificity which issues you have determined to rebut.

Your application for post-hearing comments should come after you have read either the Presiding Officer's report or the final staff report or both.

The Application Process

I. Timing of Applications

Although an application for compensation may be submitted any time after the initial notice, it is usually to your advantage to file it as soon as possible after initial notice of rulemaking appears. Applications are generally reviewed and approved or rejected within the context of the proceeding as it stands at the time of the review. An application can be rejected because another applicant representing the same interest has already been funded and additional participation is not needed for adequate representation.

If you need time to prepare your request, inform the Bureau that you intend to apply. Such a notice of intent will help the Bureau in its review of earlier applications. To ensure timely decision, you should estimate the time needed to prepare for the hearings and make sure to submit your application well ahead of the time needed.

II. The Review Process

A. Submitting your Application:

Send your application to:

Special Assistant for Compensation
Office of the Director
Bureau of Consumer Protection
Federal Trade Commission
Washington, D.C. 20580

Soon after receiving your application (usually within 7 working days), the Special Assistant for Compensation will send you a letter acknowledging receipt. The letter will also note any obvious deficiencies in the application or additional information required for a decision. If the application is complete, the letter will give the date (usually within 3 weeks of receipt of the application) by which a final decision should be made.

Direct any inquiries about the status of your application to the Special Assistant for Compensation.

*Reprinted from Federal Register, June 14, 1977. Copies of the booklet are available from the Federal Trade Commission.

B. *Review of your Application:*

(1) The Special Assistant for Compensation gives your application to the Presiding Officer, who prepares recommendations for the Bureau Director. Staff attorneys involved in the proceeding file separate comments on the state of the record.

(2) The application, Presiding Officer's recommendation, and staff attorneys' comments then go to the Office of the Bureau Director for review.

(3) If your application is approved, the Bureau Director will then send you a letter containing the formal approval and the budget as approved by the Bureau. If it is rejected, the Bureau Director's letter will explain the reasons your application was not funded.

How To Write Your Application

I. Narrative Proposal

First present your narrative justification. To minimize copying cost, please type your proposal *single spaced* on *letter size* (not legal size) paper. In your narrative, address the following issues:

a. The interest you represent, the relevance of the proposed rule to that interest, and the reason participation by the interest in the Trade Regulation Rule Proceeding is necessary for a fair determination of the proceeding taken as a whole.

b. Your description of yourself or your organization, its structure, and its normal activities; the reasons it is an appropriate representative of the interest; and why your participation is necessary for an adequate representation of the interest.

c. The reasons you require compensation to participate effectively in the proceedings. This section should include information on your operating budget for the current year, financial statements describing the sources and uses of funds relating to ongoing programs and activities, and any other pertinent financial information. You should also explain here why the interest you represent cannot finance the participation.

d. How you intend to use the funds during each stage of participation. Insofar as possible, you should describe the specific evidence, activities, studies, or other outputs that will result in each stage of participation. You should match these with the itemized budget, which is Part II of your application, including responsibilities of each staff member, expert and consultant; information on time and salary for staff members; time and fees for experts and consultants; travel and per diem; and other costs.

e. The resumes of the proposed major constituents.

f. Any other considerations you feel are significant.

II. The Proposed Budget

After you have completed your narrative proposal, use the budget form for Part II of your application (included at the end of this booklet). The Special Assistant for Compensation can send you additional copies of budget forms. The following pages provide an explanation of this budget form, of keeping accounts and receipts for reimbursement claims and audits, and of some miscellaneous matters.

Limitations on Compensation

I. Costs Incurred in Preparing the Application.

The Commission's Rule 1.17 provides that compensation is not available for costs incurred before the Bureau has received your application.

II. Reasonable Costs

A. *General Standards*

According to the statute, the compensated expenses of participation must be "reasonable" as well as actually incurred.

Fees for consultants and experts are limited to the maximum rates the Commission can pay its own consultants and experts.

Travel expenses are limited by government standards. Commercial travel must be coach class. Auto mileage is reimbursed at a rate of $.15 a mile. Per diem expenses exceeding the rate of $37 per day are not reimbursable, no matter where they are incurred. Per diem is meant to include lodging and meals. Your per diem claim must be accompanied by hotel or motel receipts. If you stay in a private home or otherwise incur no lodging expenses, you are limited to $17/day per diem for meals.

The Bureau regards Federal Civil Service salaries as proxies for market rates for determining payments to third parties. It will not approve rates exceeding those paid government employees of

similar experience and background.

There are two charts attached to the application blank for budgets (at the end of this booklet). One explains maximum hourly rates and other expenses for which third party law firms may bill you and for which you may be reimbursed by compensation funds. It also explains the method by which you determine the cost to you of any staff (salaried) attorneys for reimbursement purposes. The second chart details the means of determining your overhead and indirect costs.

B. *Salaried Employees*

For your salaried employees or the salaried employees of your group, the hourly rates you quote for each must accurately reflect their prorated salaries plus fringe benefit costs to your organization, such as FICA. The ceiling on these hourly rates is explained in the attached charts.

C. *Unanticipated Expenses*

You should devote sufficient planning to prepare your budget with reasonable accuracy. It is to your benefit that the Bureau authorize any additional funds prior to your incurring the extra costs. The Bureau cannot always approve supplemental payment authorizations because funds may already have been fully committed elsewhere.

To request supplemental funding, you should send a letter to the Special Assistant for Compensation explaining and justifying the request and enclose a supplemental budget for these additional costs which you anticipate incurring. Similarly, if you wish to reallocate major budget categories, you must send a letter explaining the reallocation. Unless you receive written approval of any costs above your budget categories or your maximum allowed budget, you will *not* be reimbursed for those costs.

Miscellaneous Issues

A. *Regulated Interests*

The Improvement Act specifically provides that compensation can be paid for representation of an interest which would be regulated under the proposed rule. Such application should be made on the same forms and will be treated in the same manner as any other application.

The extent to which the Commission can consider such applications is limited by the statute in that compensation paid to such persons may not exceed 25% of the aggregate amount paid as compensation to all persons in a fiscal year.

B. *Right to Participate*

The grant or denial of an application for compensation does not affect your right to participate in the proceeding applied for.

However, an application for compensation is not a substitute for the communications to the Presiding Officer required by the Commission's Rules of Practice. To participate in the proceeding, you must follow the rulemaking procedures whether or not applying for or receiving compensation.

In appropriate circumstances, the Bureau may approve compensation for a particular activity contingent upon the Presiding Officer's independent approval. Nothing in the compensation program affects the Presiding Officer's authority over the proceedings. If the Presiding Officer chooses to limit cross-examination privileges by designating a representative for similar interests, funds for cross-examination purposes can be claimed only by that representative.

C. *Advance Payments*

Rule §1.17(3)(1) provides for advance payments where necessary. As appropriate, advances may be granted *in some instances* in amounts up to 50% of the maximum approved budget. Further advances are contingent on reconciliation of your reimbursement claims and evidence of work in progress. If for any reason the money is not spent for the funded purposes, or if particular expenditures are not allowed, you must refund the money.

All participants, except state governments as defined in P.L. 90-957, must refund all interest earned on advances of compensation funds directly to the U.S. Treasury.

D. *Accounting, Financial Management, and Auditing Standards*

Compensated participants must account for all compensation funds using generally accepted accounting practices which must be consistently applied, regardless of the source of funds. You must support all expenditures of compensation funds by accurate and neat records and receipts. Itemize these records and receipts in sufficient detail to show the exact nature and cost of the expenditures for each account. All personnel should sign statements attesting to the number of hours worked, the nature of the work, and the hourly rate. Salaried employees should state their weekly, biweekly, or monthly salary to explain the basis for the prorated hourly rate. There should also be an explanation of any fringe benefits added to that rate. Copies of these records and receipts will be the basis for your reimbursement claim.

Reimbursement claims must be requested within 60 days following the completion of your participation. Any advances will be subtracted from the approved reimbursement. You needn't wait until the end of your participation to submit reimbursement claims if you have outstanding obligations in connection with your participation in the proceeding and wish to get interim repayment.

To prepare and maintain acceptable accounting records:

1. Maintain a separate bank account for all funds advanced by the Commission to support your approved budget for participation.

2. Subdivide your accounts into various budget categories approved by the FTC.

3. Support all expenditures charged to the budget categories with vouchers or receipts approved by the authorized director of your project.

4. Maintain time-and-attendance records to support salary and wages which you claim. Have each person sign his time-and-attendance record. Include and explain all travel receipts.

Retention of Records

Accounting records are considered to be all records relating to the receipt and expenditure of FTC compensation award funds and to the expenditure of the participant's contributed share of the cost of a project. Records required for retention include all accounting records and related original and supporting documents that substantiate costs charged to the rulemaking activity.

If compensated, you must keep your accounting records for participation in a rulemaking proceeding for at least 3 years. Such records are subject to audit by the Federal Trade Commission and the General Accounting Office. If you disagree with the results of the reconciliation of your reimbursement claim or of any audit, present your case to the Director of the Bureau of Consumer Protection within 30 days of the receipt of notification of the reimbursement claim or audit results. The decision on such appeals by the Bureau Director is final and conclusive. In all cases, audit findings referred to you for comment must be responded to not more than 30 days after receipt of such findings. You must file a written response which meets each issue raised by the auditor subsequent to each audit performed either by FTC agency staff or by the FTC's contracted auditors.

E. *Allocation of Funds to Particular Proceedings*

The Bureau does not allocate funds among the individual rulemaking proceedings or limit the amount that may be granted for compensation in any particular proceeding. In the future, however, it may set forth in the initial notice a limit for funding in a particular proceeding and reject applicants automatically once this ceiling has been reached. Notice of any such procedure would be included in the initial notice of the rulemaking proceedings.

F. *Individual Witness, Consultant, and Expert Compensation*

The Federal Trade Commission has separate procedures for Commission staff to hire experts and consultants and to pay them for their work, including appearances at hearings. In addition, the FTC has a program whereby staff can compensate individual witnesses for expenses incurred in the course of participating in hearings. Individuals wanting reimbursement for such expenses should contact Commission staff well in advance of their appearances and obtain information about these programs. They should not file applications under the compensation program unless the required statutory findings can be made.

If you wish to locate your own witnesses and to include provisions for witness payment in your application budget, keep in mind that the Federal Trade Commission allows a witness fee of $20 per day of testimony plus $16 for subsistence expenses. In addition, witnesses may be reimbursed for their actual travel expenses, including intracity cab fare.

G. *Performance Standards*

If your application and budget are approved and your participation costs are to be reimbursed, the Presiding Officer will be asked afterward to comment on the quality of your work. He will also report on his estimation of the appropriateness of your claimed expenditures in terms of your contribution to the proceeding.

If you then apply for reimbursement of participation costs in an additional rulemaking proceeding, the Bureau Director will consider the quality of your past performance.

H. *Role of the Commission Staff*

The staff will assist any prospective applicant only by describing information on the material to be introduced into the rulemaking record. Direct your questions about the proceedings to the Assistant Director for Rulemaking and about the application process to the Special Assistant for Compensation.

Neither the staff nor the Presiding Officer will help write an application, provide special favors or services to any particular applicant, or penalize any applicant for taking a position at variance with that of the staff. In addition, neither the staff nor the Presiding Officer can commit the Bureau

to approving or rejecting a particular application. You can help maintain the impartiality of this program by contacting the staff only for factual information on the rulemaking proceeding. Direct all inquiries about the status of your application to the Special Assistant for Compensation rather than to the Presiding Officer or the staff.

Keep in mind that, if your application is approved, you will not be "working for" the Federal Trade Commission. Therefore you cannot rely on FTC clerical or administrative assistance of any kind in carrying out your participation. Nor can the FTC aid you by using its authority, *e.g.*, subpoena power, to help you obtain information which you could not otherwise obtain.

CHART A
Effective Date: May 25, 1977

OVERHEAD (INDIRECT COSTS) AND FRINGE BENEFITS

I. *Overhead* includes such items as heat, light, space, basic telephone, and indirect administrative costs. You may add a flat percentage (25%) of each employee's hourly rate for overhead.

Not included in overhead are:

1. *Secretarial hours* ($6/hour flat rate, includes all fringe benefits but does not include 25% overhead).
2. *Travel*
   A. Intracity transportation (must be documented if over $15; otherwise must be itemized and affirmed by applicant).
   B. Intercity transportation $37/day flat per diem for means and lodging; commercial class plane, train, or bus; or 15¢/mile for private auto (must be documented: hotel receipts, all commercial tickets, and an itemization of each travel expense by date, person travelling, locations, and any other pertinent information).
3. *Direct* administrative costs such as bookkeeping, xeroxing, and equipment rental.

II. *Audited Overhead Rates*
If the GAO has audited your organization's overhead calculations, you may use the percent figure assigned to you by GAO. Submit documentation and an itemization of costs included in your overhead rating when you submit your application and budget.

III. *Fringe Benefits* should include each employee's cost to you over and above the salary you pay each person. For example, figure the percentage costs of unemployment compensation, health and life insurance, workmen's compensation, and social security tax which are borne by your organization for each employee. *Do not* include sick leave, vacation time, and holidays, as they are figured in the 1672 hours/year prorated salary calculation (see Chart A, Footnote 1).

CHART B
Effective Date: May 28, 1977

MAXIMUM BILLABLE RATES FOR PARTICIPATING[1] ATTORNEYS

Years of Related Experience[2]	*GS*	*Salary*	*Hourly Rate*[3]
0 up to 2	11-10	$22,177	$21
2 up to 4	12-10	26,571	26
4 up to 6	13-10	31,598	30
6 up to 8	14-10	37,347	36
Over 8	15-10	43,923	42

1. Staff attorneys (on salaries) must calculate their hourly cost to their organization by dividing their annual salaries by 1672 hours. (Government work hours per year excluding sick leave, vacation time, and holidays are figured at 1672 hrs./yr.) To this figure is added the percentage cost of any retirement (Social Security), health and life insurance benefits, workmen's compensation, and unemployment insurance borne by the organization for each employee participating in this program. Indirect costs are accounted for by adding on 25% of the total hourly rate calculated. Only the actual cost of salaried attorneys' time may be billed for by the organization (up to the maximums in Column IV).

2. Applicants must submit attorneys' resumes.

3. The participating attorney may bill separately only for travel (commercial rates and $37/day flat rate per diem), secretarial costs ($6/hour), long distance telephone, transcripts and copying costs. Paralegal and other added professional hourly rates depend on comparison of resumes with comparable Civil Service ratings.

BUDGET FOR PARTICIPATION IN FTC RULEMAKING

(See Back for Instructions) Page of

Rulemaking Proceeding _____

Name of Applicant _____

Address _____

_____

_____

Name of Contact _____

Telephone _____ Date of Application _____

TO BE COMPLETED BY FTC

Document Control No. _____

Application Received _____

Rulemaking Number _____

Program Code _____

Presiding Officer _____

1.0 PHASE OF PARTICIPATION (Check Only One)

- ☐ Preparation Prior to Hearing
- ☐ Participation in Hearing
- ☐ Post Hearing Participation

2.0

- ☐ Original Request
- ☐ Supplemental Request
- ☐ Reimbursement Claim
  - ☐ Partial (Submission No. _____)
  - ☐ Final

3.0 BUDGET REQUEST: Attach Narrative Proposal and Resumes (For Original Request Only)

3.1 PERSONNEL COMPENSATION COSTS

Name and Title (A)	Work Description (B)	Hourly Rate (C)	Planned Work Hours (D)	Total Request (E)	Approved Amount (F)	Reimbursement Claim (G)
			Subtotal of Above (H)			
			Subtotal of Additional Pages (I)			
			Total Personnel Compensation Costs (J)			

3.2 GENERAL OPERATING COSTS

Item of Expense (A)	Explanation (B)	Total Request (C)	Approved Amount (D)	Reimbursement Claim (E)
	Subtotal of Above (F)			
	Subtotal of Additional Pages (G)			
	Total Operating Costs (H)			
	Total Personnel and Operating Costs			

4.0

A. Advance Payment This Request

Total Advance Payments to Date

B. Approved: _____ C. Availability of Funds Certification _____

Director, BCP

D. I certify that the above claim for reimbursement is true and correct and that payment has not been received: _____ _____

Applicant Signature Date

5.0 (Check One) ☐ Net Payment Due Applicant

☐ Net Remittance Due FTC (i.e., Total Cost Less Advance Issued)

APPENDIX D

GROUPS WHICH HAVE RECEIVED COMPENSATION AWARDS FOR PARTICIPATION IN FTC RULEMAKING PROCEEDINGS

Group	*Rule*
Americans for Democratic Action 1411 K Street, N.W. Washington, D.C. 20005 (202) 638-6447	Funeral industry; Over-the-counter drugs; Ophthalmic goods
Arkansas Community Organizations for Reform Now (ACORN) 523 West 15th Street Little Rock, Arkansas 72202 (501) 376-7151	Ophthalmic goods
Arkansas Consumer Research 1919 West 7th Street Little Rock, Arkansas 72202 (501) 374-2394	Funeral industry
Automobile Owners Action Council 1411 K Street, N.W. Suite 800 Washington, D.C. 20005 (202) 638-5550	Used motor vehicles
California Citizen Action Group 909 - 12th Street Sacramento, California 95814 (916) 466-4931	Funeral industry; Over-the-counter drugs; Ophthalmic goods; Health spas
California Public Interest Research Group 334 Kalmia Street San Diego, California 92101 (714) 236-1508	Used motor vehicles
Center for Auto Safety 1223 Dupont Circle Washington, D.C. 20036 (202) 659-1126	Mobile homes; Used motor vehicles
Center for Public Representation 520 University Avenue Madison, Wisconsin 53703 (608) 251-4008	Used motor vehicles
Central Area Motivation Program 105 - 14th Street Seattle, Washington 98122 (206) 324-1166	Funeral industry
Connecticut Citizen Research Group Box G 130 Washington Street Hartford, Connecticut 06106 (203) 527-7191	Food advertising
Consumer Action, Inc. 1625 Eye Street, N.W. Washington, D.C. 20006 (202) 223-5474	Food advertising
Consumer Action Now 355 Lexington Avenue New York, New York 10017 (212) 682-8915	Protein supplements

Consumers Cooperative of Berkeley 4805 Central Avenue P.O. Box 4030 Richmond, California 94804 (415) 526-0440	Protein supplements
Consumers Union 256 Washington Street Mount Vernon, New York 10550 (914) 664-6400	Food advertising; Funeral industry; Health spas
Continental Association of Funeral and Memorial Societies Suite 1100 1818 L Street, N.W. Washington, D.C. 20036 (202) 293-4821	Funeral industry
Council on Children, Media and Merchandising 1346 Connecticut Avenue, N.W. Washington, D.C. 20036 (202) 466-2583	Over-the-counter drugs; Food advertising
Iowa Consumers League Box 189 Corydon, Iowa 50050 (515) 872-2329	Food advertising
National Consumer Law Center 11 Beacon Street Boston, Massachusetts 02108 (617) 523-8010	Claims & defenses (holder in due course); Credit practices
National Consumers Congress 1028 Connecticut Avenue, N.W. Suite 522 Washington, D.C. 20036 (202) 797-7600	Food advertising; Care labeling
National Council of Senior Citizens 1511 K Street, N.W. Washington, D.C. 20005 (202) 783-6850	Funeral industry; Prescription drugs; Hearing aids
New York Public Interest Research Group 5 Beekman Street Room 410 New York, New York 10038 (211) 349-6460	Funeral industry; Ophthalmic goods
San Francisco Consumer Action 26 - 7th Avenue San Francisco, California 94108 (415) 626-4030	Protein supplements; Vocational schools; Used motor vehicles; Ophthalmic goods
Society for Nutrition Education 2140 Shattuck Avenue Suite 1110 Berkeley, California 94704 (415) 548-1363	Food advertising